

Issues	AT&T Final Offer	Arbitrator Decision
	<p>decided by the State Commissions.</p> <p><i>FCC Order ¶ 427</i></p> <p>Jacobson, Direct 18-18, Rebuttal 10-12</p> <p>Tr. 698-700; 994-997</p>	
<p>9. To what extent should AT&T be permitted to combine network elements?</p>	<p>There should be no restrictions on AT&T's ability to combine network elements, including "as is" combinations of network elements.</p> <p><i>47 U.S.C. § 251(c)(3)</i> <i>47 C.F.R. §§ 51.309; 51.315</i> <i>FCC Order ¶¶ 292-294; 328-331</i></p> <p>Flappan, Direct 18 Jacobson, Direct 20-21 (Hearing Ex. 3, §2.4 of Attachment 6)</p> <p>Tr. 627-629; 656-657; 699-700; 941-942; 949-950</p>	
<p>10. Should SWBT be required to provide facilities or equipment necessary to satisfy a request for UNEs through a Special Request Process?</p>	<p>Yes. A Special Request Process should be used to provision UNEs.</p> <p>Jacobson, Direct 21 (Hearing Ex. 3, §2.14 of Attachment 6)</p> <p>Tr. 950-951; 953-954; 956-959</p>	
<p>11. Should SWBT provide additional information regarding a UNE if requested by AT&T?</p>	<p>This issue duplicates Issue V.2. above.</p>	
<p>12. Should AT&T be able to cancel a Network Element Special Request at any time?</p>	<p>AT&T should be allowed to cancel a Network Element Special Request at any time and only be responsible for the costs associated with any additions to and/or modifications of SWBT's network.</p> <p>Jacobson, Direct 22 (Hearing Ex. 3, §2.24.3 of Attachment 6)</p> <p>Tr. 950-951; 953-954; 959</p>	
<p>13. When SWBT receives a</p>	<p>If AT&T requests a UNE that is</p>	

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request for a UNE(s) which does not have an established price, what timeframes should SWBT have for responding?	<p>operational, but not priced, SWBT should provide a price quote within 10 days following receipt of the request. If the parties have not agreed within 10 days to the price, either party may submit the matter for dispute resolution.</p> <p>If AT&T requests a UNE that is not currently operational, the parties, within 10 working days, should agree to a schedule and procedure for processing the request. This schedule should not exceed 90 days.</p> <p>Jacobson, Direct 23 (Hearing Ex. 3, §§2.24 .11 & 2.24.12 of Attachment 6)</p> <p>Tr. 959-961; 967-968; 970-973</p>	
14. Should SWBT be required to activate services for AT&T?	<p>In order for AT&T to provide service through UNEs, SWBT must be required to activate services for AT&T, including "as is" combination of unbundled network elements. Without service activation, UNEs are useless.</p> <p>Jacobson, Direct 29 (Hearing Ex. 3, §5.2.6 of Attachment 6)</p> <p>Tr. 973-974</p>	
15. Should SWBT be required to provide all technically feasible types of multiplexing/demultiplexing, grooming, digital cross-connect systems (DCS), bridging, broadcast, test and conversion features when and where available?	<p>Yes. SWBT is offering to provide the referenced services on a limited basis. The FCC has ordered SWBT to provide a requesting carrier the terms and conditions under which SWBT provides such elements to itself. Therefore, since SWBT provides an array of the referenced services to itself, it must provide the same to AT&T.</p> <p>Jacobson, Direct 32, Rebuttal 7-10 (Hearing Ex. 3, §§8.2.1.5.1 and 8.2.4 of Attachment 6)</p> <p>Tr. 975-976</p>	
16. Should cooperative testing arrangements between SWBT	AT&T must be able to test unbundled network elements in	

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and AT&T be required for network elements?	<p>order to provide adequate service to its customers. The APSC should order SWBT to work with AT&T to achieve a process to test facilities that AT&T utilizes to provide services to its customers.</p> <p>Jacobson, Direct 33, Rebuttal 2 (Hearing Ex. 3, §12.1 of Attachment 6)</p> <p>Tr. 977-978; 981-984</p>	
17. What should be the applicable depreciable lives/depreciation rates for SWBT assets utilized in the cost studies?	<p>The economic lives shown in Appendix RPF-4 to Flappan Direct. These are the most recent lives approved by the FCC Memorandum Order and Opinion in Docket No. 96-22 (Hearing Ex. 11) for SWBT on January 25, 1996.</p> <p>SWBT proposed economic lives should not be used.</p> <p>Flappan, Direct 75-77 Warren-Boulton, Rebuttal 1-14</p>	
18. What should be SWBT's cost of capital used in the cost studies?	<p>A range between 9.15 and 10.38 percent, with the compromise point estimate of 10.36 percent, should be used as SWBT's cost of capital in all TELRIC cost studies for unbundled network elements.</p> <p>Cornell, Direct 33-36; Hearing Ex. 13</p>	
19. How should the cost of interconnection and unbundled network elements be calculated, and what prices should be established?	<p>AT&T proposes that the cost of unbundled network elements and network element combinations be based on an appropriate TELRIC methodology. UNE prices should follow AT&T's final offer reflected in Hearing Ex. 13.</p>	
20. Should SWBT's cost studies be used for pricing services resale, unbundled network elements, interconnection and collocation?	<p>Only for SWBT TELRIC cost studies for setting rates for Signaling, Database and Ancillary Services, White Pages Listing, Book and Delivery, Operator Services and Directory Assistance, Line Information Database (LIDB) and Cross Connects with SMAS testing, provided such SWBT studies are</p>	

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	<p>adjusted to use 11.3% forward-looking common cost factor, FCC approved depreciation lives, Texas PUC arbitration ordered fill factors, 10.36% cost of capital and no inflation factors (Hearing Ex. 13, pp. 6-11). As to non-recurring charges, AT&T agrees to pay 50% of the non-recurring charges proposed by SWBT (Hearing Ex. 13, p. 2). SWBT's unbundled loop cost studies—both TELRIC and embedded (SWBT witness Cooper)—and SWBT's switching cost studies should not be used to set unbundled loop rates and local switching rates. Instead, AT&T proposes compromise rates set forth in Hearing Ex. 13, pp. 2-4.</p> <p>Rhinehart, Rebuttal 1-29 Warren-Boulton, Rebuttal 14-17 Hearing Ex. 13</p>	
21. Should "value of service pricing" be used in setting rates for unbundled elements?	<p>No. this is a violation of the Federal Act and Arkansas Act 77 of 1997. UNEs must be cost based.</p> <p>Flappan, Rebuttal 10</p> <p>47 U.S.C. § 252(d)(1) Act 77 of 1977, § 9(e)</p>	

VI. PHYSICAL INTERCONNECTION/COLLOCATION

Issues	AT&T Position	Arbitrator Decision
1. Should AT&T be permitted to designate the point of connection to SWBT's UNEs?	<p>Yes. If the requested point is technically feasible, then SWBT must be required to make the requested connection.</p> <p>Jacobson, Direct 19-20</p> <p>Tr. 1004-1008</p>	
2. What types of telecommunications equipment may be collocated on SWBT's premises?	<p>The parties have resolved this issue.</p> <p>Tr. 1009</p>	
3. Should new entrants be allowed to install remote switch modules?	<p>The parties have resolved this issue.</p> <p>Tr. 1009</p>	

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4. What is the proper method of pricing collocation?	<p>The price for collocated services must be based on TELRIC studies and there should be a set of standard configurations with standard pricing for each configuration set forth in a tariff.</p> <p>Flappan, Direct 50 Jacobson, Direct 41-44 , Rebuttal 14-15</p> <p>Tr. 1009-1011; 1014-1017; 1020; 1028-1029; 1032-1037</p>	
5. What are the minimum requirements for collocation of AT&T's equipment at SWBT's premises?	<p>AT&T should be allowed to collocate, either physically or virtually, in SWBT's huts, vaults, cabinets, central offices, tandem offices, and all other similar buildings and structures owned or leased by SWBT that house network facilities.</p> <p>Apparently, the only difference between the parties concerns "cabinets."</p> <p>Jacobson, Direct 36-37, Rebuttal 4-5</p> <p>Tr. 1020-1023</p>	

VII. RECIPROCAL COMPENSATION

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1. Should Bill-and-Keep be used as a reciprocal compensation arrangement for transport and termination of local traffic on a temporary or permanent basis?	<p>The Commission should impose a Bill and Keep arrangement for the first nine months after the initial passage of commercial traffic between the companies. After the initial nine months, Bill and Keep should continue unless and until a significant and continuing disparity in the levels of traffic terminated on the respective networks can be demonstrated. If demonstrated, SWBT's rates for the transport and termination of local traffic should be set at TELRIC.</p> <p>47 U.S.C. §§ 252(b)(4)(B); 252(d)(1) and (2)</p>	

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	Flappan, Direct 33-35, Rebuttal 11-12	
2. If Bill and Keep is not adopted, what should be the rates for reciprocal compensation?	In the event that there is a demonstrated imbalance of traffic, AT&T's proposed prices for end office switching, tandem switching and transport UNEs should be adopted in this proceeding for reciprocal compensation. Flappan, Direct 36-37	
3. Should reciprocal compensation or access charges apply for extended area calls?	For purposes of reciprocal compensation, traffic from extended area calls should be treated as local traffic. If Bill and Keep is not operative, TELRIC-based UNE rates should apply. Flappan, Direct 38-42	
4. What arrangement should govern transit traffic arrangements?	When a local call originated by a new entrant customer traverses a SWBT tandem switch to a new entrant switch, SWBT should be entitled to receive the TELRIC rate associated with tandem switching. Hearing Ex. 3, Attachment 12: Compensation 3.3 - 3.4. Flappan, Direct 42	
5. What rate shall apply when SWBT terminates calls on a new entrants network?	Where the interconnecting carrier's switch serves a geographic area comparable to that served by the incumbent LEC's tandem switch, the appropriate proxy for the interconnecting carrier's additional costs is the LEC tandem interconnection rate. Flappan - Rebuttal 12 FCC Order ¶1090	

VIII. NUMBER PORTABILITY

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1. What methods of interim number portability should SWBT be required to provide?	SWBT should provide number portability through four distinct, technically feasible options: RCF, Route Index - Portability Hub,	

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	<p>Directory Number - Route Index and LERG Reassignment, in addition to any other technically feasible method in compliance with the FCC Orders. AT&T requires all four options in order to meet the distinctive needs of its various customer segments.</p> <p>47 U.S.C. § 153(a)(46) 47 U.S.C. §251(b)(2)</p> <p>Lancaster, Direct 10-20, Rebuttal 3-7; Tr. 1715-1719; 1725-1731; 1734-1735; 1739</p>	
2. What method should be used to price interim number portability and what specific rates, if any, should be set for SWBT?	<p>Interim number portability should be priced according to FCC pricing principles to ensure that costs are allocated on a competitively neutral basis.</p> <p>47 U.S.C. §251(e)(2)</p> <p><i>FCC Order in the Matter of Telephone Number Portability, Docket 95-116, adopted June 27, 1996.</i></p> <p>Lancaster - Direct, 21-25; Tr. 1718-1719</p>	
3. What is the appropriate cost recovery mechanism for interim number portability?	<p>The costs should be recovered using the active lines formula: SWBT Annual INP TSLRIC x (Active Carrier Lines/Active Industry Lines) = Annual Charge per Carrier.</p> <p>AT&T is amenable to deferring this debate until the FCC's LNP Order has completed the existing appellate review process.</p> <p>Lancaster, Direct 25-28, Rebuttal 7-10, Attachment ML-6; Tr. 1718-1719</p>	

IX. DIALING PARITY AND ACCESS TO NUMBERING RESOURCES

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1. Should SWBT provide local dialing parity?	SWBT should provide complete local dialing parity from SWBT facilities for AT&T's end user local exchange customers in parity with	

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	similarly situated customers of SWBT Services. Lancaster, Direct 29-30	

X. ACCESS TO POLES, DUCTS, CONDUITS, AND RIGHTS-OF-WAY

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<p>1. Should the terms "conduit" and "conduit system" include controlled environmental vaults and other SWBT facilities which may be connected to SWBT's conduit?</p> <p>Same as Issue Nos. 30, 33 and 34. Tr. 1039</p>	<p>AT&T should be given the access it requires to controlled environmental vaults (CEVs) because they are an extension of the conduit system and in many cases are booked in the same account code as conduit (4C). The conduits and conduit systems to which it is granted access under the Pole, Conduits, and Rights-of-Way Appendix should include these facilities. (AT&T withdrew this issue as it pertained to central office vaults, stating that those facilities are properly addressed in collocation issues.) Tr. 1161</p> <p>Keating, Direct 16 (Hearing Ex. 3, §§3.09, 3.11 of the Poles, Conduits and Rights-of-Way Appendix)</p>	
<p>2. Should the term "cost" be defined in the Poles, Conduits and Rights-of-Way Appendix, and should it be defined as AT&T proposes?</p>	<p>There should be some definition of "cost" that provides a guideline for, and restrictions on, what fees and charges can be included where AT&T has agreed to pay the "cost" of some tangible item or service under the Poles, Conduits and Rights-of-Way Appendix.</p> <p>It appears that this issue is resolved. SWBT witness Hearst agreed that there should be definitional language in the contract. (Tr. 1165-1166) AT&T will agree to amend its definition by inserting "(materials and labor)" after the word "invoice" to address the concern stated by Mr. Hearst at Tr. 1209.</p> <p>Keating, Direct 16 (Hearing Ex. 3, §§3.12 of the Poles, Conduits and Rights-of-</p>	

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<p>3. Before SWBT transfers its interest in property to which AT&T has attached facilities, must the transferee agree to be bound by the terms of the Poles, Conduits, and Rights-of-Way Appendix?</p> <p>Same as Issue No. 41. Tr. 1039</p>	<p>Way Appendix)</p> <p>If SWBT transfers its interest in real or personal property which AT&T has attached or placed facilities, there should be some assurance that AT&T's investment will be protected. The transferee's agreement to be bound by the terms and conditions of the Poles, Conduits and Rights-of-Way Appendix would provide this assurance.</p> <p>Further, because nondiscrimination includes the concept that SWBT should treat competitors as it treats itself (Tr. 1159), SWBT should agree to restrictions and terms governing abandonment and transfer. The abandonment issue has been resolved; SWBT will consent to other occupants assuming ownership in case of abandonment, as it does with other utilities. Tr. 1169-1170</p> <p>As for transfers, SWBT should be required to agree to the same transfer restrictions to which it has agreed in 14 of its pole attachment/joint use agreements with other utilities. SWBT's attempt to distinguish those agreements as not being "license" agreements is meritless. In each of the 14 referenced agreements, the entity attaching to the other party's facilities is expressly designated as a "license." See Hearing Ex. 10 (under seal).</p> <p>Keating, Direct 16-17 (Hearing Ex. 3, §4.03 of the Poles, Conduits and Rights-of-Way Appendix)</p>	
<p>4. Will AT&T be granted nondiscriminatory access to poles, conduits, or rights-of-way in which dark fiber or unused four wire copper cable are located?</p>	<p>This issue has been resolved by the parties as stated at Tr. 1040.</p>	

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<p>5. Will AT&T be permitted to use leak detection liquids or devices, or cable lubricant, that are approved by Bellcore?</p> <p>Refer also to Issue No. 49. Tr. 1040</p>	<p>This issue has been resolved by the parties as stated at Tr. 1040-1041.</p>	
<p>6. May SWBT relieve itself of liability it would otherwise have under applicable environmental laws for the presence of environmental contaminants in its conduit facilities by allowing AT&T to perform tests for contaminants at AT&T's expense or requiring AT&T to make its own determinations regarding the presence of contaminants?</p> <p>Same as Issue No. 52. Tr. 1039</p>	<p>This issue has been resolved. AT&T and SWBT will include mutual language that compliance with the requirements of section 8.13 is not to be a release or limitation of liability of either party as to environmental laws. Tr. 1186-1187</p>	
<p>7. Must SWBT notify AT&T, within twenty days after application, of any known environmental hazards at a site for which AT&T has submitted an application for access to poles, ducts, conduits or rights-of-way?</p>	<p>AT&T is asking for nothing more than notification of known environmental hazards after AT&T states its intent to occupy a particular space within twenty (20) days after an application is made. SWBT's sole objection is to the 20-day notice period as "bog[ging] down the process." Tr. 1137. SWBT should know this information and should provide it as soon as possible, instead of having AT&T wait 45 days for information that may require it to choose alternative routes and hence re-start the application process.</p> <p>Keating, Direct 19 (Hearing Ex. 3, §9.06 of the Poles, Conduits and Rights-of-Way Appendix)</p>	
<p>8. Should charges for newly-licensed pole attachments and conduit occupancy be prorated to reflect the date the attachment or occupancy actually occurred, rather than requiring AT&T to pay in six-</p>	<p>AT&T is asking for proration of attachment fees, running from the date the space is assigned. In this age of computers, a proration formula is not burdensome to develop or implement. Tr. 1137-1140; 1188-1189. SWBT's</p>	

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months blocks regardless of the actual date of attachment of occupancy?	<p>proposal of semiannual payments will virtually <u>always</u> result in the new entrant paying more in attachment fees than is actually used. This is unfair and discriminatory.</p> <p>Keating, Direct 19-20 (Hearing Ex. 3, §19.04(b) of the Poles, Conduits and Rights-of-Way Appendix)</p>	
<p>9. What procedures / process must AT&T follow before placing a cable on / in a pole, duct, conduit, or right-of-way that is under the ownership or control of SWBT?</p>	<p>Access to poles, ducts, conduits and rights-of-way in a manner that is non-discriminatory and entitles AT&T to the same freedom of applying its sound engineering judgments as SWBT affords itself. Processes which AT&T should be permitted to perform itself include assessment of availability of space, analysis of plant records for most efficient route, determination of needed make-ready and appropriate construction techniques, etc. Upon AT&T's determination that a particular space is available, there is no reason AT&T should not be permitted to immediately occupy that space (after ensuring that no other party has previously "signed-out" the space). This position is consistent with the Poles, Conduits and Rights-of-Way Appendix which AT&T has submitted and is consistent with the Texas Commission's realization that traditional processes new entrants must follow prior to occupancy is a competitive concern as it could cause undue burden or delay to the new entrant.</p> <p>Keating, Direct 20-21; Tr. 1140-1144.</p>	
<p>10. Should the statement of purpose in the Poles Appendix include a statement that SWBT will provide AT&T with "nondiscriminatory access" to poles, ducts, conduits, or</p>	<p>The concept of "nondiscriminatory" access is at the core of the entire Poles, Conduits and Rights-of-Way Appendix. It is appropriate to include a statement regarding</p>	

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<p>rights-of-way owned or controlled by SWBT as provided in the Telecommunications Act of 1996?</p> <p>Same as Issue No. 28. Tr. 1039</p>	<p>"nondiscriminatory access" in the Purpose section of the Appendix, especially where there are references to other statutory provisions included in the Purpose section at SWBT's request. Tr. 1144-1145.</p> <p>Keating, Direct 21 Hearing Ex. 3, Article 2</p>	
<p>11. Is AT&T an "authorized contractor" for purposes of performing work on or within poles, conduits, and rights-of-way, and may AT&T perform work itself as an authorized contractor as stipulated in Texas?</p> <p>Same as Issue Nos. 32 and 47. Tr. 1039</p>	<p>It appears that this issue is resolved. The colloquy between Mr. Hearst and Mr. Keating demonstrates that SWBT recognizes AT&T as an "authorized contractor" to perform all "make-ready" work except such work involving intrusive modification of SWBT's lines and cables. Tr. 1145-1148.</p>	
<p>12. May SWBT interfere with AT&T's pole attachment, right-of-way, or conduit occupancy use rights provided in the Poles, Conduits and Rights-of-Way Appendix, or with AT&T's right to conduct normal business operations in serving its customers?</p> <p>Same as Issue No. 42. Tr. 1039</p>	<p>The parties have reached an agreement in principle on this issue, as stated at Tr. 1041-1042, 1044.</p>	
<p>13. Must AT&T provide five working days' notice before entering SWBT's conduit system to perform non-emergency work operations, or may AT&T provide 48 hours notice as ruled by the Public Utility Commission of Texas, especially where AT&T has agreed to provide ten (10) working days' notice as a courtesy when feasible?</p> <p>Same as Issue No. 50. Tr. 1039</p>	<p>This issue is resolved. Mr. Hearst agreed that AT&T may have access to its facilities for non-emergency work on 48 hours notice, as long as AT&T will, as a courtesy, try to give up to ten days notice when feasible, (Tr. 1190-1192) as stated in Texas.</p>	
<p>14. Must AT&T pay for an employee of SWBT to observe construction work where the work is being done by a contractor which has been approved by SWBT, or</p>	<p>If SWBT has already approved the use of a contractor, there is no need for SWBT to send an employee to observe the work, and no need for AT&T to pay for that employee's time and</p>	

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<p>where the work is performed by qualified AT&T personnel?</p> <p>Same as Issue No. 50. Tr. 1039</p>	<p>additional costs. These are discriminatory terms that SWBT does not apply to itself. Further, there is no need for SWBT to observe work performed by AT&T where SWBT has stipulated that AT&T is an "authorized contractor." The Poles, Conduits, and Rights-of-Way Appendix provides that where SWBT employees are needed for work, AT&T will pay for them. This is a fair division of costs.</p> <p>Nothing in the Telecommunications Act or in the FCC's orders requires an entrant to pay the incumbent's oversight costs. Accordingly, AT&T should bear no costs at all, and in no event should the conditions be more burdensome than those ordered in Texas; <u>i.e.</u>, AT&T will split the costs of one SWBT employee/observer in those situations where the work is being performed by a contractor that has not been authorized by both SWBT and AT&T. Tr. 1192-1194.</p> <p>Keating, Direct 23-24 (Hearing Ex. 3, §6.11(e) of the Poles, Conduits and Rights-of-Way Appendix)</p>	
<p>15. May AT&T request permission to inspect SWBT's pole and conduit maps and records, cable plat maps, or other plant location records on two business' days notice as stipulated in Texas, or must AT&T wait ten (10) business days to review records?</p> <p>Same as Issue No. 55. Tr. 1039</p>	<p>This issue has been resolved. Mr. Hearst agreed to provide AT&T access to SWBT records on two working days' notice, as long as AT&T will, as a courtesy, try to give up to ten days' notice, where feasible. Tr. 1194-1195.</p>	
<p>16. May SWBT require advance payment of the full amount of the estimated cost of modifying its outside plant for AT&T's access, or may AT&T pay half of the cost after the work is 50% complete, and</p>	<p>AT&T proposes 50% payment when half of the work is done, and the remainder at completion. This is consistent with regular business practices and also avoids the guesswork involved in paying on the basis of an estimate. This was</p>	

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<p>the remainder at completion, as ruled by the Public Utility Commission of Texas?</p>	<p>ordered by the Texas Commission. SWBT's position that payment be made in advance, based on estimates, is discriminatory in that SWBT itself does not pay its own contractors or employees in advance. Tr. 1195-1197.</p> <p>Keating, Direct 25 (Hearing Ex. 3, §§10.02, 19.06 of the Poles, Conduits and Rights-of-Way Appendix)</p>	
<p>17. May AT&T be reimbursed on a pro-rata basis by parties benefiting from modifications for which AT&T has paid, and must SWBT establish a methodology for reimbursement, as ruled by the Public Utility Commission of Texas?</p> <p>Same as Issue No. 65. Tr. 1039</p>	<p>If AT&T has borne the entire cost of a modification that benefits others, pro-rata reimbursement is fair and appropriate. The requirement that SWBT establish a methodology for the reimbursement is also appropriate, because SWBT will be the only party in possession of all applications and records relating to the use of the space affected by the modification.</p> <p>SWBT is the only entity that knows the identities of other attachees to capacity provided by AT&T, and thus it should provide the methodology, as ordered in Texas. Additionally, SWBT should be required to pay AT&T a portion of its fees collected from those attachees; otherwise, the attachee will be charged twice for those facilities. Tr. 1197-1201.</p> <p>Keating, Direct 25-26 (Hearing Ex. 3, §§10.02, 10.08, 19.06 of the Poles, Conduits and Rights-of-Way Appendix)</p>	
<p>18. If AT&T is willing to perform make-ready work proposed by SWBT, and SWBT agrees that AT&T may perform the work, must AT&T perform the work "in accordance with SWBT's plans and specifications?"</p> <p>Same as Issue No. 63. Tr. 1039</p>	<p>If AT&T believes it can more efficiently perform make-ready work to enable use of poles and conduits proposed by SWBT, it should not be bound by every detail of SWBT's plans and specifications. AT&T may have other equally acceptable methods of performing the same work, and may need to use those methods in</p>	

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	<p>order to perform the work more quickly or more economically.</p> <p>Keating, Direct 26 (Hearing Ex. 3, §10.05(c) of the Poles, Conduits and Rights-of-Way Appendix)</p>	
<p>19. Must AT&T bear all expenses for emergency repairs it has not authorized?</p>	<p>The parties have resolved this issue as stated at Tr. 1042-1043.</p>	
<p>20. Must SWBT provide cost justification for the administrative fees it proposes to charge?</p>	<p>AT&T withdraws this issue from further consideration because AT&T has proposed a rate for attachment fees that includes administrative costs; therefore, there would be no separate administrative fees. Tr. 1045-1046; 1056-1057; Attachment DCK-3.</p>	
<p>21. Should the Poles, Conduits and Rights-of-Way Appendix, which is part of the Interconnection Agreement between SWBT and AT&T, contain provisions regarding performance and payment bonds, indemnification, assignment of rights, waiver, effective date, dispute resolution, and general legal provisions that are different from the Terms and Conditions of the Interconnection Agreement addressing the same subjects?</p>	<p>SWBT proposes lengthy articles on the same subjects covered in other parts of the Interconnection Agreement. Especially where potential legal liability is involved, it is important that the Interconnection Agreement as a whole clearly sets out the rights and obligations of the parties. SWBT's proposed language on indemnity, limitation of liability, and other provisions mentioned above, is different from the language used in the Terms and Conditions Section of the Interconnection Agreement. If AT&T and SWBT are attempting in good faith to resolve a dispute or answer a question that has arisen under the Interconnection Agreement, two sets of provisions on the same subject are, at best, confusing. At worst, differing or conflicting provisions create complicated, lengthy, and expensive legal or administrative disputes. The parties should be able to look in one place in the Interconnection Agreement for the answer to a particular question and not be confronted with interpreting two provisions that cover the same subject. Tr. 1156.</p>	

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	Keating, Direct 28-29 (Hearing Ex. 3, Articles 20, 21, 23, 25, 26, 28, 29)	
22. What compensation should SWBT receive for AT&T's use of its poles, ducts, conduits or rights-of-way?	SWBT should be reimbursed for reasonable incremental costs actually incurred in making pathway space available to AT&T, but only to the extent that the work is necessary to meet AT&T's request. AT&T's proposed rates for use of pathway facilities are: AT&T Pole Attachments - \$2.35 per attachment per year, and AT&T Conduit Occupancy - \$0.40 per foot per year, and \$0.13/ft/yr for inner duct (one-third the full duct rate). Keating, Direct 31-32, Attachment DCK-3; Tr. 1058.	
23. Should a license agreement be required before SWBT will grant access to Poles, Duct, Conduits and ROW?	AT&T and SWBT withdraw this issue from further consideration. Tr. 1046; 1051	
24. Should SWBT be required to provide access to its poles, ducts, conduits, and rights-of-way and under what rates, terms and conditions?	AT&T's proposed contract sets forth fair, non-discriminatory terms, conditions and rates for access to SWBT's poles, ducts, conduits and rights-of-way. The contract proposed by AT&T is essentially identical to that approved in Texas, with the only exceptions being those issues that were not considered by the Texas arbitrator. SWBT's proposed contract defies the Texas contract and contains many provisions that are discriminatory and oppressive. AT&T recommends that the Arkansas arbitrator accept AT&T's proposed contractor or direct AT&T to prepare a contract in accordance with its order, as the Texas arbitrator did. Tr. 1159-1160.	
25. Does SWBT's proposed Master Agreement for Access to Poles, Ducts, Conduits and Rights-of-Way comply with	See AT&T's response to Issue No. 24, <u>supra</u> .	

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the Pole Attachment Act and applicable FCC rules, regulations, and guidelines and, if not, what changes should be made in the proposed Master Agreement to conform to the applicable federal laws?		
26. What changes, if any, should be made to Section 2.01 of SWBT's proposed Master Agreement to conform that section to applicable federal law?	Refer to AT&T's response to Issue No. 10, <u>supra</u> .	
27. What changes, if any, should be made to Section 2.02 of SWBT's proposed Master Agreement to conform that section to applicable federal law?	AT&T believes that its Article 2, "Purpose of Appendix," is equally consistent with the Pole Attachment Act ("PAA") and is preferable to SWBT's Sections 2.01-2.04. AT&T's Article 2 includes the statutory mandate of <i>nondiscriminatory</i> access and does not dismiss the parties' lengthy and intense negotiations by making the entire agreement "interim" and subject to renegotiation with any future change in the law. See also comments to 2.04.	
28. What changes, if any, should be made to Section 2.03 of SWBT's proposed Master Agreement to conform that section to applicable federal law?	See AT&T's response to Issue No. 27, <u>supra</u> .	
29. What changes, if any, should be made to Section 2.04 of SWBT's proposed Master Agreement to conform that section to applicable federal law?	This section, like many others in SWBT's agreement, attempts to divorce the parties' agreements on the subject of poles, conduits, and rights-of-way from the parties' agreements on all other subjects addressed in the Interconnection Agreement. The parties are not entering into a separate poles agreement in a vacuum, but are negotiating a complex relationship on a myriad of subjects pursuant to the Telecommunications Act of 1996. The poles agreement simply does not, and should not, stand alone and independent of AT&T's and SWBT's agreements on other parts of the	

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	Interconnection Agreement; most important, the poles agreement should not conflict with the Interconnection Agreement or control over it in the event of conflict. Where the FCC has stated that a written agreement is not even required for access to poles, conduits, and rights-of-way, having the poles agreement control the Interconnection Agreement is truly "the tail wagging the dog." Tr. 1127	
30. What changes, if any, should be made to Section 3.02 of SWBT's proposed Master Agreement to conform that section to applicable federal law?	See comments to Issue 29; the only issue is that AT&T prefers to treat the Poles Appendix as an integral part of the overall Interconnection Agreement, not as a stand-alone agreement. This intent is better reflected in AT&T's Poles Appendix Section 3.02, and AT&T's Poles Appendix Section 3.02 is in full accordance with the PAA as SWBT's proposed language.	
31. What changes, if any, should be made to Section 3.04 of SWBT's proposed Master Agreement to conform that section to applicable federal law?	See comments to Issues 29 and 30, <u>supra</u> ; AT&T's Poles Appendix Section 3.05 is equally in accordance with the PAA.	
32. What changes, if any, should be made to Section 3.06 of SWBT's proposed Master Agreement to conform that section to applicable federal law?	Refer to AT&T's response to Issue No. 11, <u>supra</u> .	
33. What changes, if any, should be made to Section 3.08 of SWBT's proposed Master Agreement to conform that section to applicable federal law?	Refer to AT&T's response to Issue No. 1, <u>supra</u> .	
34. What changes, if any, should be made to Section 3.10 of SWBT's proposed Master Agreement to conform that section to applicable federal law?	Refer to AT&T's response to Issue No. 1, <u>supra</u> .	
35. What changes, if any, should be made to Section 3.11 of SWBT's proposed Master Agreement to conform that	AT&T prefers the definitions of "conduit," "conduit system," "duct," "pole," and "right-of way" found in Sections 3.09, 3.11, 3.13, 3.27,	

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section to applicable federal law?	and 3.23 of its Poles Appendix because in SWBT's Master Agreement, it is not at all clear what poles, conduits, and ducts SWBT believes are <i>not</i> "subject to the Pole Attachment Act" and which SWBT thus intends to exclude from the agreement (thus denying AT&T access). The issue of vaults is addressed in Mr. Keating's direct testimony at pages 15-16.	
36. What changes, if any, should be made Section 3.19 of SWBT's proposed Master Agreement to conform that section to applicable federal law?	AT&T's Section 3.21 more accurately reflects the parties' careful negotiation of what the term "make-ready work" does and does not include. AT&T's contractual language on make-ready work, agreed to by SWBT in Texas, reflects the fact that SWBT is requiring that AT&T perform detailed analysis before even filing an "application" for access. In this competitive context, AT&T has an interest in ensuring that its own preparation work will not be duplicated, causing delay and expense. Moreover, Section 3.19 of SWBT's proposed Master Agreement includes, as part of "make-ready work," SWBT's planning and engineering performed to verify or determine the extent of make-ready work. This would add further unnecessary, anticompetitive costs and was neither agreed to by AT&T nor ordered by the Texas Commission.	
37. What changes, if any, should be made to Section 3.25 of SWBT's proposed Master Agreement to conform that section to applicable federal law?	See AT&T's response to Issue No. 35, <u>supra</u> .	
38. What changes, if any, should be made to Section 3.26 of SWBT's proposed Master Agreement to conform that section to applicable federal law?	J hooks and drive rings may have to be placed at locations other than 6 inches above and below an attachment such as on the quarter of the pole above all telecommunications attachments,	

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	this avoids interference with anyone's attachment. In some cases these drive rings and J hooks are the sole attachments to a pole. In these cases this hardware does not take up any attachment space for any cable if properly attached.	
39. What changes, if any, should be made to Section 3.30 of SWBT's proposed Master Agreement to conform that section to applicable federal law?	See AT&T's response to Issue No. 35, <u>supra</u> .	
40. What changes, if any, should be made to Section 3.34 of SWBT's proposed Master Agreement to conform that section to applicable federal law?	AT&T has no objection to the definition of "strand" contained in this section.	
41. What changes, if any, should be made to Section 4.03 of SWBT's proposed Master Agreement to conform that section to applicable federal law?	Refer to AT&T's response to Issue No. 3, <u>supra</u> .	
42. What changes, if any, should be made to Section 4.04 of SWBT's proposed Master Agreement to conform that section to applicable federal law?	Refer to AT&T's response to Issue No. 12, <u>supra</u> .	
43. What changes, if any, should be made to Section 4.06 of SWBT's proposed Master Agreement to conform that section to applicable federal law?	SWBT's Section 4.06 is not required by the PAA; moreover, the subject of AT&T's facilities on public or private property is dealt with in detail in Article 5.	
44. What changes, if any, should be made to Section 5.01 of SWBT's proposed Master Agreement to conform that section to applicable federal law?	SWBT's Section 5.01 omits the cross-reference to Section 5.03, the carefully-negotiated stipulation regarding the procedure for access to rights-of-way that should control over all more general provisions.	
45. What changes, if any, should be made to Section 5.04 of SWBT's proposed Master Agreement to conform that section to applicable federal law?	The language in this section was agreed to by the parties as part of Section 5.03. AT&T prefers it to remain in Section 5.03 but has no dispute as to the substance.	
46. What changes, if any, should be made to Section 6.03 of	This provision requires that any extension arms or stand-off	

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SWBT's proposed Master Agreement to conform that section to applicable federal law?	brackets attached to SWBT poles must be purchased from SWBT and become SWBT's property upon attachment. It further implies that additional space on these facilities may be allocated by SWBT without compensation to AT&T. These provisions are plainly discriminatory and anticompetitive. The FCC Order requires reimbursement to an entrant that provides additional capacity. See also discussion at Issue 17.	
47. What changes, if any, should be made to Section 6.08(c) of SWBT's proposed Master Agreement to conform that section to applicable federal law?	Refer to AT&T's response to Issue No. 11, <u>supra</u> .	
48. What changes, if any, should be made to Section 6.09 of SWBT's proposed Master Agreement to conform that section to applicable federal law?	AT&T has agreed to myriad of specifications and safety rules. The only issue raised is whether AT&T may abide by clear, neutral standards, or whether AT&T must abide by unarticulated standards imposed by SWBT. For example, SWBT's 6.09(b) requires that only "properly trained" personnel may work around SWBT's poles and conduits, without specifying the meaning of "proper" training, or clarifying who decides what is "proper." AT&T's Section 6.09(a) requires that any person working around SWBT's poles and conduits must have "the training, skill, and experience required to recognize potentially dangerous conditions relating to the pole or conduit system, and to perform the work safely." This is a much clearer standard. AT&T's 6.09(e) adequately covers the subject of SWBT's Section 6.09(g) and was agreed to in Texas by SWBT. SWBT's 6.09(k) is unnecessary. AT&T has agreed to adhere to the requirements of Section 6.09; how it plans to accomplish that compliance internally is not SWBT's concern.	

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49. What changes, if any, should be made to Section 6.10 of SWBT's proposed Master Agreement to conform that section to applicable federal law?	This issue has been resolved by the parties. This issue is the same as Issue No. 5. Tr. 1040-1041.	
50. What changes, if any, should be made to Section 6.11 of SWBT's proposed Master Agreement to conform that section to applicable federal law?	Refer to AT&T's response to Issue Nos. 13 and 14, <u>supra</u> .	
51. What changes, if any, should be made to Section 6.12 of SWBT's proposed Master Agreement to conform that section to applicable federal law?	There is simply no question that AT&T will comply with applicable law, and Sections 6.12 and 6.14 of AT&T's Poles Appendix clearly state this.	
52. What changes, if any, should be made to Section 6.13 of SWBT's proposed Master Agreement to conform that section to applicable federal law?	Refer to AT&T's response to Issue No. 6, <u>supra</u> .	
53. What changes, if any, should be made to Section 6.14 of SWBT's proposed Master Agreement to conform that section to applicable federal law?	There is simply no question that AT&T will comply with applicable law, and Sections 6.12 and 6.14 of AT&T's Poles Appendix clearly state this. Furthermore, subsections (d) and (e) of SWBT's Section 6.14 obligate AT&T to conform to SWBT standards—whatever they may be, now or in the future. AT&T should not be bound to vague, open-ended provisions like these.	
54. What changes, if any, should be made to Section 6.16 of SWBT's proposed Master Agreement to conform that section to applicable federal law?	This provision is so vague as to be impossible to comply with in practice. How AT&T is to glean what SWBT considers the comparative stringency of undefined "specifications" is unclear. AT&T has promised to abide by sixteen subsections of specifications; SWBT should either clearly define where it expects conflicts to arise, or delete this provision.	
55. What changes, if any, should be made to Section 7.03 of SWBT's proposed Master Agreement to conform that section to applicable federal law?	Refer to AT&T's response to Issue No. 15, <u>supra</u> .	

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law?		
56. What changes, if any, should be made to Section 8.01 of SWBT's proposed Master Agreement to conform that section to applicable federal law?	AT&T prefers its Section 8.01 that originally was drafted and agreed to in Texas to embody a ruling of the Texas Commission.	
57. What changes, if any, should be made to Section 8.02 of SWBT's proposed Master Agreement to conform that section to applicable federal law?	AT&T prefers its own language on this subject matter and objects to the arbitrary three-month limitation in subsection (e).	
58. What changes, if any, should be made to Section 9.01 of SWBT's proposed Master Agreement to conform that section to applicable federal law?	Refer to AT&T's response to Issue No. 33, <u>supra</u> .	
59. What changes, if any, should be made to Section 9.02 of SWBT's proposed Master Agreement to conform that section to applicable federal law?	AT&T prefers its own language on this subject matter and objects to subsection (h), which enables SWBT to charge higher rates for multiple services.	
60. What changes, if any, should be made to Section 9.05 of SWBT's proposed Master Agreement to conform that section to applicable federal law?	AT&T's concern regarding this provision is the addition of the language that SWBT expects to be paid for "planning and engineering" make-ready work. See comments to Issue No. 36, above.	
61. What changes, if any, should be made to Section 10.01 of SWBT's proposed Master Agreement to conform that section to applicable federal law?	The basis for AT&T's engineering or economic decision not to pursue a project is not a legitimate item of concern for SWBT. AT&T's promise to withdraw or amend its application, set forth in AT&T's Section 10.01(c) is sufficient. AT&T has no objection to the provisions on immediate occupancy; the objection is to SWBT's lengthening of the waiting period to review relevant records.	
62. What changes, if any, should be made to Section 10.02 of SWBT's proposed Master Agreement to conform that section to applicable federal law?	This issue includes the issue 16 and is addressed in Mr. Keating's direct testimony at pages 25-26. AT&T prefers its language in its Section 10.02; the "authorized contractor" issue arises again as well. The basis for AT&T's specific agreement to indemnify SWBT in one limited	

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	circumstance in Section 10.02(b) of AT&T's Poles Appendix is the product of a specific stipulation. AT&T believes that all other indemnity concerns should fall under the indemnity provisions of the Interconnection Agreement.	
63. What changes, if any, should be made to Section 10.04 of SWBT's proposed Master Agreement to conform that section to applicable federal law?	Refer to AT&T's response to Issue No. 18, <u>supra</u> .	
64. What changes, if any, should be made to Section 10.05 of SWBT's proposed Master Agreement to conform that section to applicable federal law?	Refer to AT&T's response to Issue No. 18, <u>supra</u> .	
65. What changes, if any, should be made to Section 10.08 of SWBT's proposed Master Agreement to conform that section to applicable federal law?	Refer to AT&T's response to Issue No. 17, <u>supra</u> .	
66. What changes, if any, should be made to Section 12.03 of SWBT's proposed Master Agreement to conform that section to applicable federal law?	AT&T does not believe that a license should be required for merely attaching drive rings or J hooks on unassigned space.	
67. What changes, if any, should be made to the remaining sections of SWBT's proposed Master Agreement which have been identified by AT&T as provisions that AT&T does not agree to?	Refer to AT&T's response to Issue Nos. 24 and 25, <u>supra</u> .	

XI. GENERAL TERMS AND CONDITIONS

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1. Should the Interconnection Agreement contain performance standards?	Performance standards, reporting, and measurement requirements should be established to ensure prompt and nondiscriminatory performance in all aspects of service resale and the UNE environment. Performance standards should be the same for customers of new entrants as for customers of SWBT. Hearing Ex. 3, Attachment 17 for liquidated	

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	<p>damages provisions.</p> <p>AT&T agrees to invoke the liquidated damages provision only as to loop installation intervals, meantime to repair, installation of inward number portability and any other performance standards that are "customer affecting."</p> <p>Dalton, Direct 27-29, Rebuttal 3</p> <p>Tr. 342-344</p>	
<p>2. Should the agreement provide for a Most Favored Nations clause?</p>	<p>AT&T has agreed to remove this issue from the arbitration.</p> <p>Tr. 159; 338</p>	
<p>3. Should the agreement be implemented without impairing SWBT's right to file tariffs in the normal course of business?</p>	<p>AT&T does not dispute SWBT's right to file tariffs. AT&T disagrees with SWBT's assertion that a tariff may supersede or change any terms of an Interconnection Agreement between AT&T and SWBT.</p> <p>47 U.S.C. § 252 (i) 47 C.F.R. § 51.809</p> <p>Dalton, Rebuttal 11</p> <p>Tr. 168-170</p>	
<p>4. Should SWBT be required to provide unbundled network elements unencumbered with additional costs of intellectual property rights?</p>	<p>Yes.</p> <p>Dalton, Rebuttal 11</p>	
<p>5. What limitation of liabilities should be imposed on the parties?</p>	<p>Unless specified elsewhere in the contract, the liability to each other during any Contract Year should not exceed the total of any amounts due and owing to AT&T pursuant to the section of the Interconnection Agreement on Performance Criteria, plus the amounts charged to AT&T by SWBT under this Agreement.</p> <p>AT&T agrees to involve the liquidated damages provision only as to loop installation intervals, meantime to repair, installation of inward number portability and any</p>	